

**WIEGO Law Pilot Project on the Informal Economy**  
**Consultation on Domestic and Fish Workers**

August 23, 2008

ISI, Bengaluru

**Agenda**

**9.00 A.M. – 9.30 A.M. - REGISTRATION**

**9.30A.M – 10.35 A,M – LEGISLATION FOR DOMESTIC WORKERS – ISSUES AND CHALLENGES**

*Chair : Ms Roopa Madhav, WIEGO Pilot Project*

Introduction to WIEGO – Ms Shalini Sinha, Coordinator WIEGO Law Project  
Presentation of the WIEGO Law Project – Dr Kamala Sankaran, University of Delhi,  
WIEGO Pilot Project

Baba Adhav, *Hamal Panchayat*  
Ms. Geetha, *NMPS*

**10.30A.M– 10.45A.M – TEA BREAK**

**10. 45 a.m – 12.30p.m – LEGISLATION FOR DOMESTIC WORKERS - WAGES, HOURS OF  
WORK, REGULATORY STRUCTURES, ROLE IN ILO STANDARD SETTING**

*Chair : Ms Roopa Madhav, WIEGO Pilot Project*

Discussion

**12.30 p.m – 1.30p.m - LUNCH**

**1.30p.m – 2.45.m – FISH WORKERS – LIVELIHOODS, NATURAL RESOURCES AND NEED FOR  
LEGISLATION**

*Chair : Dr Kamala Sankaran, University of Delhi, WIEGO Law Project*

Presentation of the WIEGO Law Project – Ms. Shalini Sinha, Ms. Roopa Madhav,  
WIEGO Pilot Project

Ms. Nalini Nayak, Researcher and Activist  
Mr. Benny Kuruvilla, Focus on the Global South

**2.45 p.m – 4.00 p.m – FISH WORKERS – LIVELIHOODS, NATURAL RESOURCES AND NEED FOR  
LEGISLATION - CONTINUED**

**4.00 p.m –4..15 p.m   TEA**

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ISI, Bengaluru – 23/8/2008

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24. Ms Roopa Madhav  
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**WIEGO Law Pilot Project**  
**Domestic Worker and Fish worker Consultation, Bengaluru,**  
**23<sup>rd</sup> August 2008**

**Venue: ISI Conference Room 124, Benson Town, Bengaluru,**

Shalini Sinha, Project Co-ordinator for the WIEGO Law Pilot Project introduced herself and the project, while welcoming everyone and thanking them for their time.

A brief outline of WIEGO Law Pilot Project was made by Shalini Sinha

Kamala Sankaran, WIEGO project, discussed the nature of the 2 previous consultations held in India. She mentioned the following key issues arising from the past discussions:

- **Own Account Workers:** Enabling legal frameworks for own account workers are important since the NCEUS report suggests that a large segment of workers in the country are involved in non- employer-employee relationships. But how does such inclusion take place? This is emerging as a key conceptual challenge.

Internationally, there is a conceptual trend of moving the focus from ‘employee’ to ‘worker’. The ILO adopted in 2006 the Employment Relationship Recommendation. This recommendation deals with mentions a ‘worker’ category which falls outside the employee definition and purview, and the Recommendation requires every nation to develop a policy framework which brings self employed within labour laws mandate. ILO develops tests to ascribe employer relationship for such a worker.

For instance, one of the tests depends on the nature of remuneration received by the worker. The test to ascertain if a person is an employee, requires analysis on the nature of wages and income earned by the worker. Are such persons economically dependent on anyone else?

For example, forest workers are a large group of self employed people who collect timber produce. Anyone who collects/produces in the forest economy is part of a value chain and this could be the basis to argue that one has the right to claim minimum support price. Thus by virtue of being a worker – one should be able to make a claim upon the produce, and those in the value chain including buyers of the end raw materials or products should contribute towards social security. Forest workers could make this claim independent of whether they are in employment relationships or not. Where the need is to locate such an employment relationship, the ILO Recommendation can be used effectively in sectors where employer-employee relationships are difficult to trace, such as fish workers.

Statisticians distinguish between the truly self employed and those who are economically dependent on others, termed own account worker. Many of the 5 workers being involved in the WIEGO consultations are own account workers.

### **Initiating the Consultation on Domestic Work (Kamala Sankaran)**

In the case of domestic workers, the issues of migration and child labour are important. Kamala clarified that DW's were not in the own account category. There were clear employer-employee relationships. She made the following points about domestic work, while initiating the consultation.

- Mainly women engaged and employed
- Overlap of social and economic roles and identities
- Low remuneration
- Occupational segregation – based on caste/class/gender
- Violence against workers
- Framing working hours and contract is difficult for legal framework.

Kamala stated that the hope for the current discussion was to identify what activists and researchers working for the welfare of DW wanted as a legal framework to guide regulation, enforcement mechanisms and working conditions in the sector.

The ILO is creating a convention on domestic work in 2010 and shall shortly circulate their law and practice report. This will be circulated amongst governments, employers and trade union organizations, after which the ILO, over a two-year period, will discuss a draft Convention or Recommendation on the subject..

Best practices need to be shared as the WIEGO project also aims to create an online observatory for legal frameworks and strategies which have been used effectively by governments and activists to ensure protection and decent working conditions. The WIEGO Law project circulated copies of the law on DW the SEWA, Kerala and South African Law.

### **Baba Adhav, Trade union leader, Hamal Panchayat**

Baba Adhav stated that the cause for proliferation of DW was the onset of urbanization and the need for the new middle class for care related assistance. He described DW as 'the need of the time'. But the condition of the workers is troubling. He had been working in this field for 15 years and said the problems of DW related to those pertaining to **social justice**. He called the problems 'mixed', not purely social or economic.

- DWs are predominantly female and issues of **caste, religion and geography** are important. Dalit sections and untouchables/nomadic tribals are employed only in some families. He says in Brahmin families, they only employ certain castes.. Muslim women are not employed in Hindu families. In Delhi, tribal (Santhals) women from Jharkhand work for 24 hours a day without adequate payment or protection. What is the future of these girls?
- Full time workers need protection against **sexual harassment**. As a trade unionist, he felt there needs to be certain basic living and working conditions. Many girls clean clothes for their employers, were not given enough powder to clean their own items.
- **Occupational health and hazards** are important. He mentioned how several DWs cleaned clothes and utensils with powder which was unsafe and not adequate. He said this similar to the case of workers engaged in the banana and mango market that used certain harmful chemicals for ripening the fruit.
- **Violence and Gender**: He further discussed the importance of gender. He felt that in the north of the country, unequal and oppressive gender relations caused women to face the brunt of domestic abuse and violence from husbands in the case of part time work and employers in the case of full time work
- **Education of Children**: He mentioned how difficult DWs found the process of educating their children, which caused greater child labour.

He felt that the legal framework needed to be comprehensive and address the at the following:

- (a) **Social exploitation**
- (b) **Occupational hazards**
- (c) **Domestic violence**
- (d) **Child education**
- (e) **Community and caste based exploitation**

- He also stated that the **Mathadi Act could be used as a model** for calculating minimum wage for DWs also. The Mathadi Act allows those workers undertaking cleaning/stacking/carrying of goods the following:

**Minimum wage, bonus, maternity, gratuity, Workmen's Compensation, insurance, scholarships**

- He placed significance on the **emerging social security law for the unorganized sector vis-à-vis sector specific legislations**. While several occupations shall come under the unorganized sector bill, there was a need felt to look at the relationship between previous and current acts and the unorganized sector bill. He

requested all present to discuss and draw attention to interaction of laws across states in the country.

- He also mentioned the need to look at **the poor implementation** of the law. He cited the case of construction where despite directives, the Maharashtra government took 8 years to set up welfare boards.
- **Women's Work and Invisibility:** Women in agricultural labour are paid half the rates. The Jana Jagran Morcha traveled all over the state – and they were yet to find equal pay for equal work. He felt that the patriarchal gaze with which women's work was classified as insignificant needed to be battled.

### **Geetha R, Tamil Nadu Unorganised Workers' Union**

She discussed the work of her union in trying to organize DWs, fish workers and construction workers. She said that while DWs were included in the common welfare board in 2000 for Tamil Nadu, **implementation** was a battle.

- **Welfare Boards:** She said that the role of welfare boards had become the give doles to workers. They provide money for various heads. The boards have given a sense of identity to the workers, but certain fundamental issues have been ignored relating to minimum wages, wage payment, regulation of working conditions and the protection of migrant workers. She says that while TN has an excellent law , the government was unwilling to address the issue. The dilemma at the state level is the welfare board is not looking into regulation of working conditions. As per the recent Vishakha judgment, there is a need to address sexual harassment cases as well.
- **Full time workers** face obnoxious working conditions and there have been cases of suicides reported in the Kerala media. Placement agencies running in Delhi, Chennai and Mumbai are creating bigger problems as globalization has brought migrant workers to these areas and there are no measures for their protection. The trade unions are in 'crisis' as they cannot communicate with the migrant groups properly. We need a board which shall make registration of domestic workers, employers and agencies compulsory. National level legislation is required to regulate the agencies as they take commission and disappear with crores of rupees without the workers earning their salaries. Labour Commissioner cannot enter this situation as no law has been made. There is need for redressal mechanisms to play a role especially for workers employed by agencies.
- **Migration and Unions:** She commented on how the unions were facing a crisis as they could not communicate with migrant labour, which was in desperate need of protection.



- **Wages and Dearness Allowance:** Due to the efforts of the domestic worker unions in several states, there has been a **move towards instituting domestic work into the minimum wage schedules**. However, the struggle is going on. She feels that one of the key issues to be included in the law is the need for dearness allowance, which should be linked to the Consumer Price Index. The biggest problem nowadays is food security.

**The discussions that followed were centered around 5 thematic areas:**

### **I. Wages and Working Hours**

There have been questions regarding the calculation of wage – if it should be time based or piece rated. There was a clarification required regarding the way the Bangalore based Stree Jagruti calculated wages for a task lasting 45 minutes for a 4 member family. The minimum wages was worked out for cleaning and other tasks; cooking was not a work for which the minimum wages had been calculated by the Bangalore group..

Kamala discussed the highlights of the various draft legislation on DW – National Commission on Women, the National Campaign Committee, SEWA Kerala draft and the draft Maharashtra DW bill. The NCC drafts and other drafts vary on the definition given to domestic workers. There needs to be some clarity in definition for wage calculation as well. Should childcare be included?

Kamala discussed the need to establish a stronger justification for why part time domestic workers living wages were calculated assuming a 5 hour working day. While minimum wages for agricultural labour are calculated using a 5-6 hour day and NREGA uses a 7 hour working shift.

Further full time workers are on-call 24 hours a day and this on-call period should be included in wage stipulations.

Many present from the unions agreed that wherever piece rate wages are fixed, they are really low. Time rated wages were preferred – fixed by the hour, not piece. Further for full time work, there was a need felt to include night time work/on call periods for age calculations.

### **II. Definitions**

There was much discussion on the need to clarify and distill the notion of a ‘domestic worker’, considering many workers were engaged by households and small shops and establishments for similar work and pay. This is an important dimension with the proliferation of agencies and the growth in their clientele. The ISST representative (Shrayana) discussed such trends in Delhi, where agencies were providing workers to households and establishments.

Should such work be included in the concept of domestic work?

Kamala – Should place of work be the defining criteria or the type of work?

It was stated that by including work done in establishments and shops as domestic work, the domestic workers movement could aspire for similar social protection guaranteed to workers under the Shops and Establishments Acts. There was also discussion on whether those engaged in cleaning work in establishments should be covered under the DW law as the NCC bill proposed. It was pointed out that this would imply that a section of the workforce – at present covered under the Contract Labour Act, who are engaged through a contractor for cleaning work in offices and shops, would then be deprived of this coverage and instead be covered under the DW law. This may not be welcomed by these workers or their trade unions.

### **III. Sexual Harassment and Discrimination**

The Alternative Law Forum (ALF) (Clifton) representative discussed the feudal nature of domestic work and the caste discrimination experienced by workers. He shared how workers in Bangalore often were given left overs to eat and were not allowed to enter rooms of worship. Questions raised on the casteist and community based violence and discrimination displayed towards the workers (ALF)

Representatives from the Bangalore domestic workers union (Sister Celia) mentioned the need to look into the verbal and emotional abuse inflicted by employers on the workers.

### **IV. Current Laws – State and Centre**

The current Bill circulated by the National Commission for Women discusses the registration of agencies. However, this deals with only protecting internal migrant labour for domestic work, not **emigration**.

None of the laws discussed or circulated for DW mention **dispute settlement** as used in the industrial workers case.

None of the bills are clear on how **enforcement and regulation** of working conditions shall take place. How shall inspections be done?

**State vs. Central level bill** – There was discussion on how the central and state efforts at legislation could be co-ordinated since certain states have made much headway on legislating for DW.

### **V. Migration and Trafficking**

Kamala pointed out that there is an overlap between migrant domestic workers and trafficking; clarity was needed on whether the DW law should deal with trafficking issues. It was felt that the emigration act is not strong enough to allow social protection portability for DWs. There has been much NHRC discussion on trafficking. What is the best way to check sexual exploitation of domestic workers?

Adriana, Columbian lawyer, mentioned her work with the UN Protocol for Trafficking for Domestic Service. This protocol not only looked at international trafficking, but internal trafficking as well. She pointed out that criminal sanctions could be put in place to deal with trafficking issues.

Ananya from Equations mentioned the nexus between tourism development and trafficking and migration for prostitution and hospitality related work in Goa.

Shrayana, from ISST mentioned the need to disentangle trafficking from migration as such discourse would punish women for attempting to chalk a better life for themselves.

## **VI. Welfare Boards**

Some of the draft DW laws propose the creation of welfare boards for delivering benefits. Yet there is need to discuss how the collection and contribution from employers will be calculated or ensured. Most laws suggest a flat payment at registration, which is a one time payment.

ALF representatives present mentioned the need to look at house tax (1% share) and family income to derive a share for wages or employee contributions to the DWs welfare board. It was felt that this would allow the worker to share in the benefits from the household's earnings, in which she/ he were important contributors through care work.

Nalini Nayak pointed out that several workers may not register with the correct board due to benefits being better for other jobs. Unions shall need be closely involved with the registration process. However, concerns were raised about unions which were registering workers incorrectly. Geetha suggested that scrupulous unions can be the entry point for welfare and social security mechanisms for workers and such unionization needs to grow. After this, implementation becomes key.

## **FISH WORKERS**

**Shalini Sinha and M. Roopa on behalf of the WIEGO Pilot Project initiated discussions with a presentation** on fish workers and issues emerging from the review of legislations, international discourse and legal cases.

**This presentation was followed by a presentation by Nalini Naik, Sewa Kerala**

She stated that while there has been progressive legislation, implementation has been very tough. There have been rapid changes in the sector which many in authority do not

want to recognize. Sustainability of fisheries is a women's issue and there is a need to engage in a feminist perspective on fisheries. She stated that she was disappointed at the ILO's proposals pertaining to fish-work as they exclude women.

She discussed the following problems pertaining to the situation with fish workers

- **Defining Economic Rights**

This has emerged as a moot concern as there is need to lobby for a definition of rights and workers in relation to livelihoods based on natural resources. Issues around resource access and the right to work and earn a living and decent life are important.

- **Defining Coastal Zones**

With the onset of Coastal Management Zone (CMZ), the definition of coastal areas and land use patterns has become very vague and complicated. There are various categories mentioned within the draft notification and these are difficult to decipher.

- **Defining fishing community**

There is tension in defining the fishing community. Should it be based on castes which have been historically associated with fishing? Or should it focus on those who attempt to earn a livelihood from fishing? Should it include the larger business community engaged in profit oriented fishing?

- **Traditional / 'Small scale' fishing**

It has become tough to distinguish between those boats and crafts which use modern destructive equipment from the genuinely traditional fishing boats as some small crafts have motors and huge nets. These are extremely destructive and cost as much as trollers. However, such boats and practices are supported and protected.

- **Gender and Fishing**

While Kerala's laws pertaining to fishing include women, the international paradigm looks at fisheries through an increasingly mechanized and 'professionalized' perspective, whereby women's roles is seen as minimal.

## **Benny Kuruvilla, Focus on the Global South**

He began by stating the necessity to look into the emerging trade architecture and the WTO as they impact the sectors such as fish work.

India is signing Free Trade Agreements rapidly. Close to 27 FTAs have been tabled - while 18 are being negotiated another 9 are being implemented. At such forums bureaucrats and big business see conservation as barriers to trade.

Strangely, fishing is classified under the Non Agricultural Market Access clause at the WTO – which implies that automobiles and fisheries are included in the same trade clause and treated similarly.

Deep tariff cuts are expected to hurt the fishing community. Fisheries are part of on-going sectoral negotiation with the government hoping to achieve zero tariff barriers and decrease Quantitative Restrictions. Recent discussions for the India –EU Trade and Investment Agreement received warnings from the Kerela government. The government stated that such reform in the fisheries sector would affect 5 varieties of fish in the region.

Investment rules are pertinent for fisheries too. Recent fisheries agreements between the EU and ACP countries and Chile have seen increase in joint ventures and approval for 100% Foreign Direct Investment (FDI).

Under such a clause, privileging the traditional fish sector can fall foul of agreement.

## **IDENTIFYING ISSUES**

The following issues were discussed following the presentations

### **I. Defining Fish Work and Worker**

Such a reconceptualization shall allow women, inland fishing and those from non traditional fishing communities to seek benefits from their labour.

Kamala discussed the need to define the fishing community as holding rights over certain **natural resources**. Definition of worker is a concern as those working off-boats are also engaged by the sector. Inland fishing is on the increase but has been under no regulation. Fish farming is growing and women are involved in larger numbers with inland fishing. Such forms of work need to be included in the worker definition.

In Gujarat, people from the same caste and community hold ID cards and work in fishing. They are also the only ones able to purchase boats. Other migrants and tribals do not get their share. Now women are not allowed in certain areas for work in the fishing harbours.

### **Natural Resource Management**

This is part of a larger debate on land acquisition, which can now be taken to the oceans. The issue of natural resources was brought up as important to understand and engage within a legal framework and discussion. How can the use and patterns of usage of natural resources be regulated and determined?

This emerged as a serious area for concern in lieu of the increasing population pressure and privatization of the oceans. The cases of Oil companies and Reliance were cited. Nalini Nayak specifically mentioned the need for a comprehensive law which regulates

use of natural resources with sustainability in mind, for water bodies and the oceans in particular.

Some in the audience suggested a law or bill parallel to the Forest Conservation Act in 2006, whereby each person gets a certain land and nothing can be sold unless accepted by certain commons. However, those present from National Fish Workers Forum and the International Collective in Support of Fish Workers felt that this could be problematic given the friction between communities. More importantly, fish as a resource is mobile and the area for fishing shall be difficult to define. Further, the failure of the JFM model was also cited. Thus, there is a need to look at common use of water bodies such as the oceans as a separate entity.

The text of the Coastal Aquaculture Act, 2005 was seen as a useful entry point to tackle such conservation issues. However, a majority felt the need for natural resource legislations which look at the definition of the worker in relation to use of natural resources and place of work as the natural habitat and environment.

## **II. NFF Draft Bill**

NFF has drafted a bill but it fails to focus on natural resources. NFF was asked to share the contents of the bill. The ICSF representative felt the NFF draft ignored the own-account workers who have more dependence on the use of natural resources and have invisible employer-employee relations.

## **III. Welfare Board, Regulation and Corruption**

Currently, central government over-rides the state level legislation, but state units have more capacity to monitor and implement. However union activists mentioned major corruption in the Revenue Authorities at the state level.

Concluding the discussions, Shalini Sinha invited those present to share their suggestions on how the WIEGO Pilot Project could take up further the ideas that came up in the course of the consultations